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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,365	05/18/2005	Pascal Hennemann	05-309	6038
34704	7590	03/17/2009		
BACHMAN & LAPOINTE, P.C.			EXAMINER	
900 CHAPEL STREET				VOLZ, ELIZABETH J
SUITE 1201			ART UNIT	PAPER NUMBER
NEW HAVEN, CT 06510			3781	
			MAIL DATE	DELIVERY MODE
			03/17/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/535,365	HENNEMANN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ELIZABETH VOLZ	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 May 2005.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 9-16 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 9-16 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 18 May 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>5/18/05</u> .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

1. This office action is responsive to the preliminary amendment filed on May 18, 2005. As directed by the amendment: no claims have been amended, Claims 1-8 have been cancelled, and new Claims 9-16 have been added. Thus, Claims 9-16 are presently pending in this application.

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

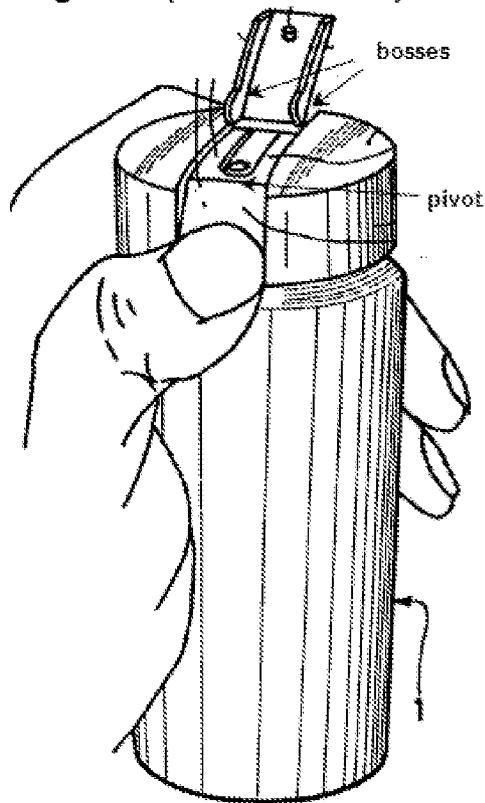
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by De Laforcade et al. (EP 0547978).

5. Regarding Claim 9, De Laforcade et al. discloses a device for opening-closing a container having a stopper 2 (Figure 2) arranged at an end and to which there is articulated a shut off flap 8 (Figure 2) equipped with a locking system (Column 11, Lines 40-45) and which collaborates in sealed closure with a hole (Figure 2) formed at an upper part of the stopper or is made to open by flipping (Figure 2), said shut off flap comprising controlled opening means including an energy storing elastic member 10 (Figure 2) inserted between an upper part of the stopper and a lower part of the shut off

flap, the energy storing elastic member comprising two spring leaves 10 (Figure 8) that are elastically deformable in one of their free parts, secured to two arms, one of the respective ends of which is immobilized in mortises formed on the upper part of the stopper and each of the other ends of which is equipped with a lateral pivot (Figure 2 below) able to fit in corresponding respective housings formed facing one another on the upper part of the stopper (Figure 7), in a region away from the region of the mortises, said arms being equipped with pivots being joined together by means for releasing the flap which comprise a frontal pressing region of an operating button 7 (Figure 2) secured to the pivots and extending downward at right angles to the arms on one side of the articulation formed by said pivots and extending towards an inside of the stopper, in a plane more or less parallel to the arms, on the other side of said articulation, by a lever able to perform lifting by rotation against an internal part of the free end of the shut off flap away from a hinge when pressure is exerted on the pressing region of the operating button, until such time as a pip 18 (Figure 2) is released from the hole (Figure 2).

**Figure 2 (De Lafocade)**



6. Regarding Claim 11, De Lafocade et al. discloses two bosses (Figure 2 above) opposite the spring leaves, constituting points that compress the leaves on closure.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Lafocade et al. (EP 0547978) in view of Takahashi et al. (U.S. Patent No. 5,573,127).

9. Regarding Claim 10, De Lafocade et al. teaches all the limitations substantially as claimed except for a shut off flap comprising internal reliefs constituting pressing ridges. However, Takahashi et al. teaches internal reliefs 25 (Figure1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify De Lafocade et al. to include internal reliefs, as taught by Takahashi et al., in order to receive the force of pressing the button (Column 4, Lines 48-51).

10. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Lafocade et al. (EP 0547978) in view of Takeuchi (U.S. Patent No. 5,501,348).

11. Regarding Claim 12, De Lafocade et al. discloses an operating button, the lever, the lateral pivots, the arms and the spring leaves are created as one piece (Figure 8). De Lafocade et al. does not disclose being molded of plastic. However, Takeuchi teaches being made of plastic (Column 8, Lines 1-2). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify De Lafocade et al. to be made of plastic, as taught by Takeuchi, in order to be more flexible and cost effective.

12. Regarding Claim 13, De Lafocade et al. teaches all the limitations substantially as claimed except for a block of elastically deformable elastomer inserted into an upper region of the stopper near the hinge so as to collaborate, in crushing, when the flap is in a closed position, with a rib produced in a corresponding internal region of the latter. However, Takeuchi teaches an elastically deformable elastomer 26 (Figure 1B) and a rib 27 (Figure 1B). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify De Lafocade et al. to include a block

of elastically deformable elastomer and a rib, as taught by Takeuchi, in order to increase the ease of opening the closure.

13. Regarding Claim 14, De Lafocade et al. discloses a frontal pressing region 7a (Figure 10) of an operating button, secured to two lateral pivots 10a (Figure 9) able to be articulated in two corresponding housings 33 (Figure 9), said pressing region being extended at its upper part, beyond the articulation formed by the pivots, towards the inside of the stopper, by a lever more or less perpendicular to the pressing region and able to perform lifting by rotation against an internal part of the free end of the shut off flap away from the hinge when pressure is exerted on the pressing region of the operating button, until such time as the pip is released from the hole (Figure 10).

14. Regarding Claim 15, De Lafocade et al. discloses an operating button consisting of the pressing region, the pivots and the lever is created in one piece (Figure 8). De Lafocade et al. does not disclose being made of plastic. However, Takeuchi teaches being made of plastic (Column 8, Lines 1-2). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify De Lafocade et al. to be made of plastic, as taught by Takeuchi, in order to be more flexible and cost effective.

15. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Lafocade et al. (EP 0547978) in view of Takeuchi (U.S. Patent No. 5,501,348) and Vogel et al. (U.S. Patent No. 4,067,782).

16. Regarding Claim 16, De Lafocade et al. and Takeuchi teach all the limitations substantially as claimed except for indicators to indicate a first opening. However,

Vogel et al. teaches indicators 17 (Figure 3). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify De Laforcade et al. and Takeuchi to include indicators, as taught by Vogel et al., in order to indicate if the closure had been opened before (Column 2, Lines 56-60).

17. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH VOLZ whose telephone number is (571) 270-5430. The examiner can normally be reached on Monday-Thursday, 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. V./  
Examiner, Art Unit 3781

/Anthony D Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781